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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/845,666	04/30/2001	William E. McKinzie III	10599/10	2274

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EXAMINER	
LE, HOANGANH T	
ART UNIT	PAPER NUMBER

2821

DATE MAILED: 05/26/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)
	09/845,666 Examiner HoangAnh T Le	MCKINZIE ET AL. Art Unit 2821

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) Responsive to communication(s) filed on 29 March 2004.
- 2a) This action is FINAL. 2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) Claim(s) 1,4-15,17,18 and 20-47 is/are pending in the application.
 - 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) Claim(s) _____ is/are allowed.
- 6) Claim(s) 1,4-15,17,18 and 20-47 is/are rejected.
- 7) Claim(s) _____ is/are objected to.
- 8) Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on _____ is/are: a) accepted or b) objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) All b) Some * c) None of:
 1. Certified copies of the priority documents have been received.
 2. Certified copies of the priority documents have been received in Application No. _____.
 3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>3/29/07</u> | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

1. The amendment filed on March 29, 2004 is acknowledged.

Claim Rejections - 35 USC § 102

2. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

3. Claims 1,4-7,12-15,17,18, 30-34,38-41, and 44-46 are rejected under 35 U.S.C. 102(e) as being anticipated by Sievenpiper et al (the US patent No. 6,538,621).

The Sievenpiper et al reference teaches in figure 6 an artificial magnetic conductor (AMC) comprising: a frequency selective surface (FSS) including voltage variable capacitive elements 18 to give the FSS an effective sheet capacitance which is variable to control resonant frequency of the AMC. The voltage variable capacitors comprise microelectrical-mechanical system (MEMS) based variable capacitors (col. 4, lines 34-36). The voltage variable capacitors comprise varactor diodes (col. 4, lines 34-42). Figure 7 shows a conductive backplane structure 12; and a spacer layer 24 separating the FSS and the conductive backplane structure, the spacer layer pierced by conductive vias 14 electrically coupling bias signals between the conductive backplane

structure and adjacent conductive patches. Figure 11 shows ballast resistors between the selected conductive patches.

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 8-11,20-29,35-37,42-43 and 47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sievenpiper et al ('621,cited above) in view of Sievenpiper et al (the US patent No. 6,426,722).

The Sievenpiper ('621) reference teaches every feature of the claimed invention, excluding the FSS comprising: a first layer of conductive patches disposed on a first side of a dielectric layer; a second layer of conductive patches disposed on a second side of the dielectric layer, portions of the second layer of conductive patches overlapping portions of the first layer of conductive patches.

The Sievenpiper ('722) reference teaches in figures 6a-6b a FSS comprising: a first layer of conductive patches 12 disposed on a first side of a dielectric layer (upper layer); a second layer of conductive patches 12 disposed on a second side of the dielectric layer, portions of the second layer of conductive patches overlapping portions of the first layer of conductive patches in order to improve the performance of the frequency selective surface.

Since one of ordinary skill in the art would recognize the benefit of improving the performance of the frequency selective surface, it would have been obvious to provide Sievenpiper ('621) with a first layer of conductive patches disposed on a first side of a dielectric layer; a second layer of conductive patches disposed on a second side of the dielectric layer, portions of the second layer of conductive patches overlapping portions of the first layer of conductive patches as taught by Sievenpiper ('722).

Conclusion

6. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to HoangAnh T Le whose telephone number is (571) 272-1823. The examiner can normally be reached on 8:00am-4:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Don Wong can be reached on (571) 272-1834. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

8. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Hoanganh Le
Hoanganh Le
Primary Examiner